

DEFENDANTS' ATTACHMENT 1

CERTIFIED COPY

[Sheet 1, Page 1]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

AL BEAMER, ET AL.,)
PLAINTIFFS,)
v.) NO. C-1-02-013
NETCO, INC., ET AL.,)
DEFENDANTS.)

DEPOSITION OF AL BEAMER
TAKEN BY GREGORY A. SHOEMAKER, ESQ.
ON BEHALF OF THE DEFENDANTS
OCTOBER 27, 2003

VOLUME I

REPORTED BY TRACI BUTZ
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CERTIFIED REALTIME REPORTER

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I N D E X

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DEPOSITION OF AL BEAMER, VOLUME I, produced,
sworn and examined on the 27th day of October, 2003 at
the offices of McMahon, Berger, Hanna, Linihan, Cody &
McCarthy, 2730 North Ballas Road, in the City of St.
Louis, State of Missouri, before Traci Butz, Certified
Shorthand Reporter, Certified Realtime Reporter, in and
for the State of Missouri, in a certain cause now
pending in the United States District Court, Southern
District of Ohio, Western Division, between AL BEAMER,
ET AL., PLAINTIFFS, and NETCO, INC., ET AL.

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Defendants'
Attachment

1

Deposition of Al Beamer

[Sheet 2, Page 5]

S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the parties that this deposition may be taken in shorthand by Traci Butz, Certified Shorthand Reporter, Certified Realtime Reporter, and afterwards transcribed into printing, and signature by the witness is not waived.

AL BEAMER,

of lawful age, being first duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and says as follows:

MR. SHOEMAKER: First of all, I guess for the record, if we can go around the table real quick to state who all is here. If you want to start, Mr. Beamer?

THE WITNESS: Al Beamer.

MR. HABER: Rich Haber.

MR. DIGNAM: Pat Dignam.

MR. SHOEMAKER: My name is Greg Shoemaker. A couple of quick things for the record. This is plaintiff Al Beamer's deposition in the case styled Al Beamer -- actually, I don't even have the full name. I think it's Al Beamer and Title Marketing -- help me with the --

THE WITNESS: Corporation.

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head so Traci can copy your responses down, you're aware of that, correct?

A. Yes.

Q. If you need to take a break for any reason, obviously let me know. It looks like we have some coffee drinkers in this room, although you're not one of them. I'm sure we'll be taking a couple of breaks regardless, but if you need to take a break, let me know. I will allow you to do it. The only thing I would ask is if it's in the middle of a question, I would ask you to respond prior to doing that, okay?

A. Yes.

Q. Are you under any medication today?

A. No.

Q. Anything about you today that would interfere with your comprehension of questions or anything along those lines?

A. No.

Q. If you do not understand a question I ask you, feel free to ask me to rephrase it. More often than not, I will. I ask bad questions sometimes, not on purpose. They're just sometimes not stated very well, and I will do my best to rephrase them for you. Obviously your attorney may object to certain things that I ask. Unless he instructs you not to answer

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MR. SHOEMAKER: Corporation, sorry, v. NETCO, Inc.

THE WITNESS: Company.

MR. SHOEMAKER: That's actually what I thought it was.

THE WITNESS: Title Marketing Company.

MR. SHOEMAKER: Title Marketing Company --

THE WITNESS: That's correct.

MR. SHOEMAKER: -- v. NETCO, Inc., John Baumgart, and William Andrews, Civil Action No. C-1-02-013. In addition to that, we received some supplemental discovery today from Mr. Haber that I have very briefly reviewed. In addition to that, Mr. Haber has represented that due to the fact that we received this just on the morning of plaintiff's deposition, if it is necessary to re-call Mr. Beamer at a later date that he would consent to doing that, is that correct?

MR. HABER: That's correct.

EXAMINATION BY MR. SHOEMAKER:

Q. All right. Mr. Beamer, I believe you have had your depo taken before, is that correct?

A. Yes.

Q. And you are probably aware of the general rules. I'll be brief about them, but as far as answering yes or no to a question versus shaking your

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specifically, then you still have to answer the question. Do you understand that?

A. Yes.

Q. Okay. What is your address, Mr. Beamer?

A. 15760 Carriage Hill Court, Chesterfield, Missouri.

Q. Okay. And is that the address of Title Marketing Company as well?

A. Yes, it is.

Q. So you run that business out of your home?

A. Yes, I do.

Q. And are you married, Mr. Beamer?

A. Yes.

Q. And what is your wife's name?

A. Kathleen with a K.

Q. How long have you been married?

A. 27 years.

Q. Congratulations. And your wife is also a part of Title Marketing Company, is that correct?

A. Yes.

Q. In addition, this is the first time we've mentioned Title Marketing Company, but we have several times throughout our discovery referred to Title Marketing Company as THC.

MR. SHOEMAKER: Is that correct, Mr. Haber?

Deposition of Al Beamer

[Sheet 3, Page 9]

1 MR. HABER: Yes.

2 Q. (By Mr. Shoemaker) So if that is stated, TMC,

3 that will represent Title Marketing Company. In

4 addition, Transcontinental Title Company that we will be

5 talking about later has often been referred to as TTC,

6 so with -- with those abbreviations noted for the

7 record, we'll proceed.

8 Where were you born, Mr. Beamer?

9 A. Bloomington, Illinois.

10 Q. And how long have you resided at your

11 residence in Chesterfield?

12 A. Approximately 15 years.

13 Q. Okay. Where did you live city-wise before

14 that?

15 A. In Ellisville, Missouri.

16 Q. At some point you lived up in Wisconsin, is

17 that correct?

18 A. Yes.

19 Q. When did you leave the state of Wisconsin as

20 far as residence?

21 A. 1985.

22 Q. And you've resided in Missouri ever since

23 then?

24 A. I've resided in Missouri since 1987.

25 Q. Okay. What state and city did you live in in

[Page 10]

1 between there?

2 A. Excuse me a second. I'm sorry. I was in

3 Duluth, Minnesota in between times.

4 MR. SHOEMAKER: Okay. We will briefly note

5 that -- obviously I heard what he mentioned, and we'll

6 briefly talk about that.

7 Q. (By Mr. Shoemaker) I wasn't trying to trick

8 you on that.

9 A. I don't know. I was just -- I don't know what

10 my residence is at the time that I'm -- if I was still a

11 resident of Wisconsin. I don't want to state it wrong.

12 Q. For the record, Mr. Beamer was incarcerated

13 for a period of time that we'll get into at a different

14 date, and I believe that that is the time period you

15 were referring to as far as where you can't really state

16 a residence or you're not clear about a state, is that

17 correct?

18 A. Yes.

19 Q. ~ Okay. So after incarceration you moved to

20 Missouri; would that be accurate?

21 A. Yes.

22 Q. What high school did you graduate from?

23 A. Normal Community High School.

24 Q. In what city?

25 A. Normal, Illinois.

[Page 11]

1 Q. And did you attend college?

2 A. Yes.

3 Q. What college was that?

4 A. I graduated from Illinois Wesleyan University.

5 Q. Do you recall what --

6 A. Bloomington, Illinois.

7 Q. I apologize for interrupting you. What year

8 did you graduate from there, do you recall?

9 A. 1976.

10 Q. And what was your degree in?

11 A. Business administration.

12 Q. Did you attend any additional schooling after

13 that?

14 A. Yes.

15 Q. And what was that?

16 A. I attended law school.

17 Q. What law school?

18 A. I started out at Vanderbilt University law

19 school in Nashville, Tennessee, and then I transferred

20 and graduated from Marquette University law school in

21 Milwaukee.

22 Q. What year did you graduate from Marquette

23 University?

24 A. 1979.

25 Q. Did you take the bar exam that year?

[Page 12]

1 A. No.

2 Q. Did you ever take the bar exam?

3 A. No.

4 Q. You never sat for a bar in any state?

5 A. No.

6 Q. Okay. Did you practice law after 1979 when

7 you graduated from law school?

8 A. Yes.

9 Q. And what type of area did you practice in?

10 A. General practice.

11 Q. Were you with a firm or by yourself?

12 A. I was with a firm.

13 Q. What firm was that?

14 A. The Ames Law Firm of Minocqua, Wisconsin.

15 Q. Is there some reason you didn't sit for the

16 bar at that time?

17 A. In Wisconsin it's not required.

18 Q. All right. That's a pretty good reason. So

19 you were able to go into court and so forth even though

20 you didn't sit for the bar, is that correct?

21 A. Yes.

22 Q. Okay. And did you do that at that job?

23 A. Yes.

24 Q. How long did you work at that law firm?

25 A. A little over three years.

Deposition of Al Beamer

[Sheet 4, Page 13]

1 Q. Did you work for any other law firms after
2 that time frame which puts us roughly around 1982 or so,
3 is that correct?
4 A. No. I didn't work for any other law firms.
5 Q. Okay. Did you practice law after 1982 when
6 you left that law firm?
7 A. No.
8 Q. Once you left the -- was it the Ames Law Firm;
9 is that what you stated?
10 A. Yes.
11 Q. Once you left there, where did you go to work?
12 A. For Smith Barney, the brokerage firm.
13 Q. Okay. And how long did you work there?
14 A. About a year, most of a year.
15 Q. Where did you go to work at that point,
16 Mr. Beamer?
17 A. Record Data, Inc.
18 Q. What type of business was that?
19 A. A title insurance agency.
20 Q. Where was it located?
21 A. Milwaukee.
22 Q. How long did you work for Record Data, Inc.?
23 A. About eight to ten months.
24 Q. Do you recall what year you stopped working
25 there?

[Page 14]

1 A. 1984.
2 Q. Okay.
3 A. I believe.
4 Q. Where did you go to work after that?
5 A. Commonwealth Title -- Land Title Agency in
6 Brookfield, Wisconsin.
7 Q. And what was your position there?
8 A. I was a title examiner.
9 Q. Okay. How long did you work for them?
10 A. About six or eight months.
11 Q. Okay.
12 A. This was a while ago. I'm not -- these are
13 approximations.
14 Q. I understand. So that takes you what, to
15 roughly 1985?
16 A. Yes.
17 Q. Did you work for anyone else in 1985?
18 A. I -- I worked for -- while I was working for
19 Commonwealth, I did -- I worked for another title agency
20 in the evenings. I believe that was called Merrill
21 Lynch Title Agency of Milwaukee. Then I -- after
22 leaving Commonwealth I did some work for a title agency
23 in Madison, Wisconsin and then some work for
24 Commonwealth Land Title in St. Louis.
25 Q. What year was that?

[Page 15]

1 A. Late '85 into early '86. No. No. That
2 wouldn't be right. It was 1985; during the year 1985.
3 Q. Did you --
4 A. Early '85, I believe.
5 Q. Did you come to St. Louis to do your work
6 here?
7 A. Yes.
8 Q. So did you go back and forth between
9 Wisconsin --
10 A. Yes.
11 Q. -- and St. Louis at that time?
12 A. I lived in Wisconsin, and I worked in St.
13 Louis for a period of six or eight weeks.
14 Q. Okay. Did you work for --
15 A. Maybe four to six weeks.
16 Q. Did you work for any other companies prior to
17 your incarceration that you haven't referenced?
18 A. Not any substantial -- not any work over a
19 couple of days.
20 Q. Okay. What was the crime you were convicted
21 of, Mr. Beamer?
22 A. I believe it was called interstate
23 transportation of stolen checks.
24 Q. And you were actually convicted, correct?
25 A. Yes.

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1 Q. And did you enter a plea of guilty, or were
2 you found guilty after a trial?
3 A. I entered a plea of guilty.
4 Q. And you received a sentence of how long?
5 A. Three years.
6 Q. And did you serve those three years in a
7 penitentiary, or did you serve a portion of that?
8 A. A portion of that.
9 Q. Okay. Can you tell me how long, roughly?
10 A. It was roughly a year and a half, a year and
11 eight months in Duluth and four to six months in a
12 halfway house in St. Louis.
13 Q. Okay. So a total of about two years,
14 somewhere in that time range?
15 A. A bit -- a bit more than two years.
16 Q. Did the conviction have anything to do with
17 your work for any of these companies that we've
18 discussed?
19 A. It had to do with my -- when I was in law
20 practice.
21 Q. Back when you were with the law firm of Ames?
22 A. Yes.
23 Q. That's the time period that it covered?
24 A. Yes.
25 Q. Okay. And did you lose your bar license over

Deposition of Al Beamer

[Sheet 5, Page 17]

1 the incident?

2 A. Yes.

3 Q. Did you voluntarily give that up, or did you

4 have a hearing on it?

5 A. I voluntarily gave it up.

6 Q. And have you ever reapplied for -- to sit for

7 the bar in any state since then?

8 A. No.

9 Q. In addition to law school, obviously you've

10 developed some experience in the title insurance

11 industry, correct?

12 A. Yes.

13 Q. Have you had any additional formalized

14 training regarding the title industry?

15 A. Just seminars, things like that. No -- no

16 attendance at any college or -- or grad school or

17 anything that had to do with title insurance.

18 Q. Okay. So no formal classes, but you've

19 certainly been to seminars. I don't want to put words

20 in your mouth, but have you been to seminars

21 continuously from that 1987 range up to today?

22 A. Yes.

23 Q. How about regarding computers or computer

24 software? Have you had any specialized training in that

25 area?

[Page 18]

1 A. No, no classroom training. No significant

2 classroom training.

3 Q. Have you attended seminars and so forth on

4 those issues?

5 A. Yes.

6 Q. Is there an agency that runs these seminars

7 that you would attend in this area, or are they just

8 various agencies?

9 A. Various agencies.

10 Q. Do you update annually, basically -- or strike

11 that.

12 Do you attend these seminars annually

13 regarding computers or computer software to this date?

14 A. I attend various seminars, but they're not

15 necessarily annually. It's just whenever they're

16 available and they seem to be on point.

17 Q. Okay. But you continue to update your skills

18 in that area even through today, is that accurate?

19 A. Yes.

20 Q. All right. After 1987, and we're talking

21 about the time after you -- well, when you were in the

22 halfway house in St. Louis, were you employed at that

23 point?

24 A. Yes.

25 Q. Who were you working for?

[Page 19]

1 A. Commonwealth Land Title Insurance Company.

2 Q. And that would have been approximately '87, is

3 that correct?

4 A. Yes.

5 Q. How long did you work for Commonwealth?

6 A. A bit over six years.

7 Q. What type of work did you perform for

8 Commonwealth in 1987?

9 A. I was the agency representative for the state

10 of Missouri. That was my principal job in 1987.

11 Q. What type of duties did you do as agent

12 representative for the state of Missouri?

13 A. I visited Commonwealth's agents throughout the

14 state of Missouri to make sure that they were in

15 compliance with Commonwealth's rules and to make sure

16 that they were doing as much business as they could with

17 Commonwealth.

18 Q. So were you, in essence, a supervisor over

19 those people? Did they report to you?

20 A. No. They were independent contractors that

21 had contracts with Commonwealth, and I had some sort of

22 audit authority over -- over them, but other than that,

23 I didn't have any supervisory authority.

24 Q. Did you keep that same position throughout

25 that six years, or were you promoted at any time?

[Page 20]

1 A. I was promoted and given the title of agency

2 manager and added the states of Kansas and Nebraska, and

3 that was my only other title while I was with

4 Commonwealth.

5 Q. And when you got the promotion to -- did you

6 say agency manager?

7 A. Yes.

8 Q. Were you still doing the same types of things

9 as you referred to before, just in more states?

10 A. As to my -- my work with the agents, that was

11 principally the work I was doing. It was to work with

12 the agents, just in more states. They didn't change my

13 title, but they also during the course of my employment

14 there added some computer responsibilities to my -- to

15 my job.

16 Q. Is that the first time you really began

17 working with computers --

18 A. No.

19 Q. -- as far as employment-wise?

20 A. No. I started working with computers with the

21 Commonwealth Land Title agency in Milwaukee in 1984.

22 Q. Okay. What type of work did Commonwealth do?

23 A. Which Commonwealth?

24 Q. I'm sorry. The Commonwealth that you were

25 working for after 1987.

Deposition of Al Beamer

[Sheet 6, Page 21]

1 A. Commonwealth Land Title is a national company.
 2 It's a title insurance underwriter, and that's what they
 3 are. They're a title insurance underwriter. They also
 4 have what's called a direct operation so that they
 5 actually sold title insurance to consumers in St. Louis
 6 as well as working through their agency network
 7 throughout the country.

8 Q. Okay. Explain for me, if you would -- for the
 9 record, when you say underwriter insurance, explain for
 10 me the process as far as underwriting versus issuing
 11 title insurance and so forth.

12 A. Commonwealth is a title insurance underwriter.
 13 Just as a State Farm agent writing life insurance, the
 14 individual person would be the agent and State Farm
 15 would be the -- the underwriter or the company that
 16 actually is -- that has the money at risk for the life
 17 insurance. Commonwealth is the underwriter. That's
 18 their money that's at risk as to the title insurance
 19 policies, and the title insurance agent or agency is a
 20 person or company that -- that has authority to -- to
 21 write title insurance commitments and policies for the
 22 underwriter.

23 Q. So ultimately the underwriter would be on the
 24 hook financially if the title was defective in some way,
 25 is that correct?

[Page 23]

1 to some of the agents that I met through my contacts
 2 through Commonwealth and elsewhere.

3 Q. Okay. You said to sell title insurance, is
 4 that correct?

5 A. Not to sell title insurance.

6 Q. What did you --

7 A. To sell software that's -- to sell title
 8 insurance production software.

9 Q. Okay. So it's all one thing, title insurance
 10 production software, is that correct?

11 A. Yes.

12 Q. And explain to me how that works with a client
 13 of TMC.

14 A. The title insurance agent needs or uses
 15 software to accept title orders and produce the title
 16 insurance forms, title commitments, title policies that
 17 are a part of them doing their job as title agents.

18 Q. So you provided them the forms and so forth to
 19 do this, is that correct?

20 A. I provide them the computerized forms and
 21 databases and pieces of the software that permit them to
 22 enter the information in the computer and to hopefully
 23 be more efficient than if they were to hand write all of
 24 that or typewrite it.

25 Q. Is that the same basic functions that TMC

[Page 22]

1 A. Yes.

2 Q. Okay. Did you work for any other companies
 3 from '87 to '93 while you were working at Commonwealth?

4 A. Yes.

5 Q. And who was that?

6 A. Title Marketing Company --

7 Q. Okay.

8 A. -- was formed during that period.

9 Q. When was Title Marketing Company formed?

10 A. I believe it was 1987 or 1988.

11 Q. And was that company formed at that time by
 12 you and your wife Kathleen?

13 A. Yes.

14 Q. Did you have any other employees?

15 A. Not at that time, no.

16 Q. Have you ever had any other employees?

17 A. I haven't had any employees. I've had
 18 independent contractors that I've used in various jobs,
 19 but I haven't had any other employees, no.

20 Q. Nobody directly on your payroll?

21 A. Right.

22 Q. So in 1987 when you established TMC, what was
 23 the business plan of the company? What were you setting
 24 out to do?

25 A. To sell title insurance, production software

[Page 24]

1 performs as to this date?

2 A. Yes.

3 Q. I can ask it another way. Have you expanded
 4 basically what you do at TMC since that time frame?

5 A. I would say that title production software is
 6 whatever the software needs of a title insurance agency
 7 are, and so the -- the needs have grown. There have
 8 been other -- there was no e-mail in 1987. There wasn't
 9 things like that, so there have been other pieces added
 10 as part of the software, certainly, since '87, but the
 11 idea of providing the software that a title insurance
 12 agent needs to -- to do their job is -- is what I still
 13 do.

14 Q. Okay. When you sell this to a title insurance
 15 agent, is this a continuing relationship you would have
 16 with this person as far as updating these types of forms
 17 and so forth throughout, you know, maybe yearly, and I
 18 don't mean it has to be yearly but on a continuing
 19 basis, or is it a one-time deal and you're done?

20 A. It's a continuing relationship.

21 Q. Okay. So you establish relationships with
 22 these clients and I would assume hope to continue to
 23 improve what they're doing and satisfy any requests they
 24 have, is that correct?

25 A. Yes.

Deposition of Al Beamer

[Sheet 7, Page 25]

1 Q. And the majority of these agents that you sell
2 this software to are engaged in issuing or selling title
3 insurance, is that correct?

4 A. Yes.

5 Q. Did Commonwealth know that you were forming
6 this company at that time?

7 A. Yes.

8 Q. Were you under an employment agreement with
9 Commonwealth?

10 A. I don't believe I was under any written
11 employment agreement, but --

12 Q. They were aware of it, is that correct?

13 A. They were aware of it.

14 Q. And they didn't have a problem with it. They
15 must not have.

16 A. They were in agreement as to what I was doing,
17 both as their employee and as Title Marketing.

18 Q. Okay. Do you have an official title at TMC?

19 A. Not that I know of.

20 Q. Does Kathleen have an official title?

21 A. Yes.

22 Q. And what is that?

23 A. She's president.

24 Q. So since she's president, you pretty much do
25 what she says, is that right? Just kidding. You don't

[Page 27]

1 Commonwealth?

2 A. I was working at Commonwealth at least a
3 40-hour week, and then I was working and doing my Title
4 Marketing Company work another -- I don't know. It
5 depended on the week, certainly; 20, 30 hours a week
6 often.

7 Q. Okay. How did you first come into contact
8 with anyone at NETCO regarding that position?

9 A. I had first come into contact with NETCO or
10 its predecessor, Equity, in I believe it was 19 -- early
11 '89, late 1988 when Bill Baumgart decided he wanted to
12 open up a title insurance agency in St. Louis, and he
13 contacted me as the Commonwealth agency representative
14 in St. Louis.

15 Q. And that was when, 1988?

16 A. '88 to '89.

17 Q. Okay. So had you had continuous -- when I say
18 continuous, I don't mean daily or even weekly, but you
19 had some sort of continuous contact with Bill Baumgart
20 from that time until 1993?

21 A. Yes.

22 Q. When did they -- when did NETCO actually open
23 an office in St. Louis, do you know?

24 A. In '89.

25 Q. Okay. And so you obviously came to work there

[Page 26]

1 have to answer that, Mr. Beamer. She's -- she's
2 president, and you don't have a formal title, is that
3 accurate?

4 A. That's accurate, yes.

5 Q. Is it fair to say that you run the company
6 jointly with Kathleen, though?

7 A. Yes.

8 Q. Why did your employment end with Commonwealth
9 in 1993?

10 A. I went to work for NETCO. Actually, I went to
11 work for Equity Title Company which was the predecessor
12 of NETCO and Transcontinental Title.

13 Q. Eventually they split into two companies, is
14 that correct?

15 A. They did.

16 Q. Prior to your employment with -- we'll refer
17 to NETCO for purposes of the record even if we're
18 talking about 1993 realizing it's -- it was a different
19 name if that's acceptable.

20 MR. SHOEMAKER: Is that fine with you, Mr.
21 Haber?

22 MR. HABER: That's fine.

23 Q. (By Mr. Shoemaker) Prior to working for NETCO
24 in 1993, how much time were you devoting on a weekly
25 basis to your own company, TMC, versus working at

[Page 28]

1 four years later, roughly, in '93, is that correct?

2 A. That's when I started being employed by them,
3 yes.

4 Q. What type of relationship did you have with
5 them prior to '93 when you became an employee?

6 A. They -- starting in 1989 I had a contract with
7 them through Title Marketing Company. Title Marketing
8 Company had a contract with them for software, and that
9 started with their St. Louis office in 1989 and expanded
10 to their other offices.

11 Q. What other offices prior to '93 were you
12 working for or providing software for regarding NETCO?

13 A. After the St. Louis office, then I did their
14 Chicago office. I don't remember whether they had other
15 offices at that immediate point, but soon -- during that
16 period from '89 to '93 they expanded into Milwaukee and
17 into Clearwater, Florida. Actually, Tampa, Florida,
18 yeah. It was Tampa, Florida and several other cities
19 that they -- wherever they expanded after that point,
20 they always put in my software.

21 Q. Okay.

22 A. Title Marketing software. I'm sorry.

23 Q. When did they expand into the Cincinnati area?

24 A. I would be guessing. I would say '97,
25 roughly.

Deposition of Al Beamer

[Sheet 8, Page 29]

1 Q. When did that company split into two branches,
2 NETCO and TTC, which we'll discuss in more detail later?

3 A. It was the beginning of a year. I don't
4 remember if it was the beginning of '94 or the beginning
5 of '95, but somewhere in that period.

6 Q. So NETCO began doing business in Cincinnati
7 after the two companies split, is that accurate?

8 A. Yes.

9 Q. Okay. So in '93 when you became an employee
10 of NETCO, what -- in what capacity were you going to be
11 employed there? What were going to be your duties?

12 A. My duties -- there wasn't any formal written
13 statement of what my duties would be. I understood my
14 duties to be dealing with computers, information systems
15 generally, and dealing with underwriters and sort of
16 consulting, bringing hopefully my experience in the
17 title industry.

18 Q. Okay. Consulting with who?

19 A. The management of Equity and later NETCO.

20 Q. As far as consulting to provide ideas and
21 inputs on how to improve the business; is that what
22 you're talking about?

23 A. That type of thing.

24 Q. Okay. What about in dealing -- when you
25 say -- and I don't mean to misquote you, but you

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1 A. NETCO was a title insurance agent. The
2 underwriter was the -- the company whose name was on the
3 paper of the title insurance policy that NETCO was
4 issuing. The underwriter was the one who had the -- the
5 money that was going to pay the claim, if any, that
6 NETCO had on any of the title insurance policies that
7 they issued, and so NETCO in order to continue to be
8 able to write for the -- for those underwriters had to
9 comply with the underwriter's various requirements.

10 Q. So ultimately both companies needed each other
11 to get the deal done, is that correct?

12 A. NETCO certainly needed the underwriter.
13 Again, the underwriters do business as company-owned
14 operations, and they don't -- they don't have to have an
15 agent in order to issue title commitments.

16 Q. But they go through agents, obviously, to get
17 more titles, is that correct?

18 A. Yes. Certainly.

19 Q. So NETCO, in essence, as well as other title
20 agencies act as an agent to get the process complete, is
21 that correct?

22 A. Yes.

23 Q. Back in '93 when you started there, what types
24 of titles were -- I should say was NETCO targeting at
25 that time? Did they do refi's, or what exactly were

[Page 30]

1 mentioned some reference to underwriters. What do you
2 mean in that regard? What were you doing?

3 A. Well, like when they needed to negotiate a new
4 contract with their underwriter, I had been on the
5 underwriter's side, and I helped work on those
6 negotiations. When they wanted to open up in a new
7 state that they hadn't done business in previously, I
8 helped negotiate contracts and set up relationships in
9 the new states.

10 Q. Are you talking about with like
11 government-type things as far as getting incorporated
12 there and setting up, or are you talking about the
13 individual businesses they dealt with in that state?

14 A. More the individual underwriters. You have to
15 have an underwriter contract to do work in a particular
16 state, and when they were going to open up a new state,
17 Texas, that they had never been in or whatever other
18 state, then I often got involved in the negotiations and
19 in the -- in fulfilling the responsibilities that were
20 there in order to be authorized to do business in a new
21 state.

22 Q. So describe for me, if you would, the
23 relationship NETCO would have with an underwriter. What
24 is the underwriter doing for NETCO? Why do they need
25 them?

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1 they looking for?

2 A. They did a lot of second mortgage work at that
3 point.

4 Q. Okay. Did that target or focus change at some
5 point?

6 A. Well, it was -- that was not the only target,
7 but they -- they accepted the purchase business,
8 certainly, but as it went on, they -- they still
9 principally targeted lender business as opposed to
10 realtor business.

11 Q. What was your formal position in 1993 when you
12 were hired by NETCO?

13 A. I believe my title was executive
14 vice-president of information systems.

15 Q. Okay. So you were an officer of NETCO?

16 A. I was not an officer. I was not a corporate
17 officer. That's just the title they gave me.

18 Q. Were there corporate officers at that time?

19 A. I believe John Baumgart and his family held
20 all the corporate offices, or John Baumgart may have
21 held them all himself. It was a very tightly held
22 corporation.

23 Q. And Bill Baumgart was obviously there at the
24 time as well, correct?

25 A. In '90 --

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[Sheet 9, Page 33]

1 Q. 3.

2 A. Let me back up. In '93 it was a tightly held
3 corporation by -- by Bill Baumgart, not John Baumgart,
4 and as to at what point John Baumgart got involved as to
5 stock ownership in Equity Title, I'm not sure.

6 Q. So Bill actually ran the company in '93?

7 A. Well, Bill had started the company, and then
8 John became a part of it sometime later is my
9 understanding.

10 Q. Okay. Before I go any farther into your
11 employment at NETCO, let me skip here so I don't forget.
12 After your employment ended at NETCO and after your
13 employment ended at TTC, were you employed by anyone
14 else from that time frame which would have been -- we'll
15 just say the beginning of January of 2000? Were you
16 employed by anybody?

17 A. Have I ever been employed by anybody since
18 January of 2000?

19 Q. Correct.

20 A. Yes.

21 Q. And who was that?

22 A. Residential Title Services.

23 Q. And is that the only company you've been
24 employed by since January of 2000?

25 A. No. I was also employed by -- well, I don't

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1 Residential Title Services? Is that the name of it?

2 A. Yes.

3 Q. When did you begin your employment there?

4 A. I became an employee of Residential Title
5 Services in -- I don't remember if it was the end of
6 2002 or the beginning of 2003.

7 MR. HABER: It's not the end of 2003, so --

8 Q. (By Mr. Shoemaker) The beginning of 2003?

9 A. I'm sorry. I misspoke. Somewhere in 2002 to
10 2003.

11 Q. Did you have a relationship with them prior to
12 that?

13 A. Yes.

14 Q. And what was that relationship, and when did
15 it begin?

16 A. Beginning in roughly March of 2000 Title
17 Marketing Company had Residential Title Services as a
18 customer.

19 Q. Would you consider -- would you have
20 considered them a large customer at that time?

21 A. At what time?

22 Q. All right. That's a poor question. That's
23 one of them I told you I may ask. Let's start over.

24 You began doing that in roughly March of 2000.
25 Let's say during the year of 2000 was that a -- a large

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1 know how this works. I was employed by ELM Corporation
2 on behalf of Counselors Title Company.

3 Q. And is that in any way related to National
4 Real Estate?

5 A. No.

6 Q. Is that a company run by James Erwin?

7 A. Yes.

8 Q. When were you employed by them?

9 A. During the year 2001 for a period of some
10 months. I'm not sure exactly how long.

11 Q. More than three months?

12 A. Yes.

13 Q. More than six months?

14 A. I would guess that it's six months to six,
15 seven, eight months.

16 Q. Okay. When did you begin working -- well, let
17 me go back. What was your position with Counselors
18 Title?

19 A. It was -- I worked with their computers, their
20 software. I don't believe I had a title.

21 Q. Did you do anything else for them besides
22 software work?

23 A. No. It was principally software work. I
24 don't remember doing anything else besides software.

25 Q. Okay. When did you begin working for

[Page 36]

1 customer of TMC's?

2 A. It was a growing customer of TMC's. It wasn't
3 very large at the beginning, no.

4 Q. Okay. Did your sales to RTS increase from
5 2000 to 2001?

6 A. Yes.

7 Q. Did they increase even further in 2002?

8 A. Yes.

9 Q. Did that precipitate the fact that you
10 actually became an employee of RTS?

11 A. Yes.

12 Q. When was RTS incorporated?

13 A. I believe it was around 1997, '98.

14 Q. Okay.

15 A. I'm not certain.

16 Q. But you did not perform any services for RTS
17 during your employment with NETCO or during your
18 employment with TTC, correct?

19 A. Correct.

20 MR. HABER: When you get a chance, I need to
21 use the restroom.

22 MR. SHOEMAKER: We can take a break right now
23 if you want.

24 Off the record.

25 (There was a discussion off the record.)

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[Sheet 10, Page 37]

1 Q. (By Mr. Shoemaker) We are back on the record,
2 and we were talking about Residential Title Services. I
3 believe you stated you began your employment with them
4 at the end of 2002 or the beginning of 2003, is that
5 accurate?

6 A. I know that I did a contract with them in 2002
7 and another one in 2003. I don't remember whether -- I
8 know in 2003 that one specified employment. I'm not
9 sure if the contract in 2002 specified employment or if
10 that was still just a contract between Title Marketing
11 Company and --

12 Q. Okay. Are you currently employed --

13 A. Yes.

14 Q. -- with Residential?

15 A. Yes.

16 Q. What is your current position?

17 A. My current position is director of information
18 services.

19 Q. What do you -- what are your duties at this
20 time? What do you do for Residential?

21 A. I'm in charge of their computer operations and
22 hardware and software. I help with underwriter
23 relations. I help with expansion plans, planning.

24 Q. Similar to what you did at NETCO?

25 A. Similar, yes.

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1 for Residential to get new underwriter contracts,
2 improve their underwriter contracts, get underwriter
3 contracts in additional states, and I ensure that we're
4 in compliance with underwriter rules and standards.

5 Q. Legally; is that what you're talking about?

6 A. Well, the underwriters often come out with new
7 forms. Some of this connects to the computer
8 responsibilities. An underwriter comes out with a new
9 form that they expect us to produce at Residential as a
10 part of the transaction. I need to first certainly
11 understand the form from an under -- an underwriter
12 agency legal standpoint and then put it into practice
13 through the -- the agency, through the computers.

14 Q. Okay. So again, I'm certainly not getting at
15 anything to do with the unauthorized practice of -- of
16 law, Mr. Beamer, but what I'm asking you is in your
17 position there, these new forms and stuff you're talking
18 about, I assume either you or someone else tells you,
19 you know, these comply with -- with any new laws as
20 updated and so forth and you act based upon that, is
21 that correct?

22 A. Yes.

23 Q. What exactly does Residential Title Services
24 cover? What aspects of the title insurance industry
25 does Residential cover?

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1 Q. And have those duties that you've described to
2 me been fairly consistent from the beginning of your
3 employment with Residential through today?

4 A. I would say at the very beginning it was more
5 computer-related, and today it's expanded a bit more
6 from that into the other -- into underwriting and other
7 general business responsibilities.

8 MR. HABER: Greg, just to clarify for you
9 because I just took a look at it, we did provide to you
10 this morning the employment contract and software
11 license agreement with Residential, the first of which
12 employment agreement would have been effective August
13 1st, 2002.

14 MR. SHOEMAKER: Okay. Thank you. I am
15 aware, actually, that I -- that I do have those, and
16 we'll probably discuss those a little bit later in
17 detail, but I appreciate you pointing that out.

18 Q. (By Mr. Shoemaker) So August 2002, for the
19 record, is when your first employment contract started;
20 would that be accurate?

21 A. Yes.

22 Q. When you say help with underwriter relations,
23 again, describe what you do for Residential in that
24 regard.

25 A. I -- I contact underwriters, I discuss plans

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1 A. They are a title insurance agent.

2 Q. Do they actually -- and this gets back to, I
3 guess, other general questions that we've talked about,
4 but does Residential Title Services actually write the
5 title insurance contract?

6 A. The title insurance policy --

7 Q. Policy. I apologize.

8 A. -- not the title insurance contract, and yes,
9 any title insurance agent prepares the title insurance
10 policy on forms provided by the title insurance
11 underwriter.

12 Q. Does your computer software that you utilize
13 not only with Residential but with other clients include
14 those forms required by the underwriters?

15 A. Typically, yes.

16 Q. If not initially, do you incorporate those
17 into the software as you go through the process with a
18 new client?

19 A. There are some clients that they -- they fill
20 in a paper form provided by the title insurance
21 underwriter with the data from their computers, and for
22 others the entire form is in the computer, and it's
23 prepared and it's printed on blank paper, so --

24 Q. Some clients you do, some clients you don't?

25 A. So that's -- yes. It ends up with the

Deposition of Al Beamer

[Sheet 11, Page 41]

1 production of the title insurance policy that -- that's
2 provided to the customer.

3 Q. Regarding Residential Title Services, the
4 forms they currently use in that regard as well as other
5 forms, have you been responsible for either drafting or
6 incorporating those into their software program?

7 A. Along with others, but yes, I -- I am one of
8 the people that puts forms into their system, yes.

9 Q. It's part of your responsibilities there?

10 A. Yes.

11 Q. So the title insurance company drafts the
12 policy, and the underwriter ultimately is responsible
13 for the risk; would that be an accurate statement?

14 A. Well, not entirely. The title insurance
15 company in the -- in the business would be an
16 underwriter. A title insurance agency is a company like
17 Residential Title, so it wouldn't be accurate to say the
18 title insurance company drafts it because I would be
19 saying that the underwriter prepares it.

20 Q. Then let me restate it based upon that. Is
21 the title insurance agent responsible for drafting the
22 policy? Is that accurate?

23 A. Yes.

24 Q. So at Residential you or people within the
25 company are responsible for -- for drafting policies in

[Page 43]

1 Kevin Murphy are the -- who I know to be the
2 shareholders of Residential, the owners of Residential.

3 Q. At the meetings that you attend, are those
4 people present?

5 A. Some of them, yes.

6 Q. Okay. What types of meetings are they? Well,
7 strike that.

8 In addition to those people at the meetings
9 that you would attend, what types of other positions are
10 included in those meetings? Do you understand my
11 question?

12 A. Yes, but it's so -- to -- to say what meetings
13 have I attended, meetings are constant. Meetings are
14 forever, and to -- to generalize as to what meetings are
15 I don't think is possible.

16 Q. All right. Do you attend meetings where
17 strategic planning regarding operations are discussed?

18 A. I guess the word strategic -- I attend
19 meetings where operations are discussed and planning of
20 operations is discussed. I don't know about calling
21 them strategic.

22 Q. All right. One last question, I guess, on
23 Residential. What type of area does Residential
24 specialize in regarding the title insurance industry, or
25 is there a specialized portion of it?

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1 general?

2 A. Not me, but yes, other people within the
3 company do prepare title insurance policies.

4 Q. You're involved in that process, though,
5 correct?

6 A. Through my work with the computer system, yes.

7 Q. Which supplies the forms they use and so
8 forth, correct?

9 A. Yes.

10 Q. As well as making sure that the forms that are
11 being used are in compliance not only with the
12 underwriter but also legal ramifications, correct?

13 A. Generally, yes.

14 Q. Okay. Are you an officer at Residential?

15 A. No.

16 Q. Do you attend management meetings at
17 Residential?

18 A. I attend meetings. I don't --

19 Q. -- Who is generally -- who is generally --

20 A. I don't attend meetings of their corporate
21 board.

22 Q. How many people are on their corporate board?

23 A. I'm not certain.

24 Q. Well, who runs Residential?

25 A. Bob Reynolds, Andy Furhan, Brian Carrera, and

[Page 44]

1 A. There's not one specialized portion of the
2 business.

3 Q. They cover all aspects of the title insurance
4 industry?

5 A. Well, they -- they cover purchases and refi's
6 and seconds and do some commercial work, so I guess
7 there are some niches that they wouldn't cover, but
8 they -- they're generally a title insurance -- a title
9 insurance agent that covers what most title insurance
10 agents cover, I would say.

11 Q. Okay.

12 MR. SHOEMAKER: Can I get this marked as I
13 guess Defendant's 1? Is that fine? Do you want me to
14 use letters? Does it make any difference to you,
15 Mr. Haber?

16 MR. HABER: It doesn't. At trial you'll be
17 letters.

18 (Defendant's Exhibit A was marked for
19 identification.)

20 Q. (By Mr. Shoemaker) Back on the record.

21 Mr. Beamer, I have placed in front of you a
22 document titled Employment Contract that is marked as
23 Defendant's Exhibit A. Are you familiar with this
24 document?

25 A. Yes.

Deposition of Al Beamer

[Sheet 12, Page 45]

1 Q. And can you tell me what it represents?

2 A. It's an employment contract between myself and

3 Equity Title Company USA.

4 Q. Did Equity Title Company USA ultimately become

5 NETCO?

6 A. Equity Title Company USA was divided into two

7 companies, and one of those companies became NETCO.

8 Q. Okay. Is this the first employment contract

9 that you had with Equity Title Company USA?

10 A. Yes.

11 Q. And is it dated May 21, 1993?

12 A. It is.

13 Q. And you signed this contract, is that correct?

14 A. I did.

15 Q. Did John Baumgart sign it on behalf of Equity

16 Title?

17 A. Yes.

18 Q. Did you have an opportunity to review and make

19 any revisions to this contract that you desired?

20 A. There was a revision made. It was not at my

21 request --

22 Q. Okay. Let me rephrase that.

23 A. -- if that's what you're talking about.

24 Q. I'm not necessarily talking about the revision

25 on the document. Did you have an opportunity to review

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1 document along with John Baumgart's?

2 A. Yes.

3 Q. Did you have the opportunity to review and

4 revise this agreement prior to signing it?

5 A. I don't recall. It happened in 1994.

6 Q. Did you sign this document voluntarily?

7 A. Yes.

8 Q. Pursuant to the conditions set forth in here

9 underneath recital, is that correct?

10 A. I signed the contract voluntarily, yes.

11 Q. And I assume you had an opportunity to review

12 all portions of this contract prior to signing it,

13 correct?

14 A. I don't remember the circumstances under which

15 I signed this contract in 1994.

16 Q. Well, that's not the question. My question is

17 do you recall whether you reviewed all portions of this

18 contract prior to signing it?

19 A. I do not recall.

20 Q. Well, would you ever sign an employment

21 agreement without reading it, Mr. Beamer?

22 A. I wouldn't now.

23 Q. Well, to your knowledge, have you ever done

24 that?

25 A. I know at the time of signing this agreement

[Page 46]

1 this contract and make any revisions prior to you

2 signing it?

3 A. I had the opportunity to review it prior to

4 signing it, yes.

5 Q. And you signed it -- go ahead.

6 A. I don't know about an opportunity to make any

7 revisions.

8 Q. Did you ask that any revisions be made on it?

9 A. I don't recall.

10 Q. Were there any revisions to this that you

11 discussed with anybody at Equity that were not included

12 in this?

13 A. I don't recall.

14 Q. But you signed the document voluntarily, is

15 that correct?

16 A. Yes.

17 (Defendant's Exhibit B was marked for

18 identification.)

19 Q. - (By Mr. Shoemaker) Mr. Beamer, I've placed in

20 front of you a document entitled Employment Agreement.

21 Again, it's marked as Defendant's Exhibit B. Do you

22 recognize this document?

23 A. I see that it's an employee agreement with

24 Equity Title Company of America and myself.

25 Q. And on page 5, is that your signature on the

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1 that it was told to me that this was just something that

2 was being put on the books for all the Equity employees

3 and that I was asked to sign it, though it did not -- it

4 would not cover the -- my involvement with Title

5 Marketing Company and all of my other customers and

6 other software.

7 Q. Okay. But you're telling me here today that

8 you don't recall if you actually read this document

9 before you signed it?

10 A. I am telling you it was nine years ago, and I

11 barely recall that there -- that I had signed such a

12 contract. I don't recall what I did on June 14th, 1994.

13 Q. Okay.

14 (Defendant's Exhibit C was marked for

15 identification.)

16 Q. (By Mr. Shoemaker) Mr. Beamer, in front of

17 you is Defendant's Exhibit C which is another employment

18 agreement. Do you recognize this document?

19 A. Yes, I do.

20 Q. And the pages don't appear to be numbered, but

21 on the fourth page of this document, is that your

22 signature?

23 A. Yes, it is.

24 Q. And has John Baumgart signed this as well?

25 A. Yes, he did.

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[Sheet 13, Page 49]

1 Q. This document has a date on page 1 that says
2 January blank of 1999. Do you see that, Mr. Beamer?

3 A. Yes, I do.

4 Q. Was this document signed in January of 1999?

5 A. I believe it was.

6 Q. Did you have the opportunity to review drafts
7 of this agreement and make revisions to this agreement
8 prior to signing it?

9 A. Yes.

10 Q. Did you read this document prior to signing it
11 in January of 1999?

12 A. Yes, I did.

13 Q. All portions of the document?

14 A. I believe so.

15 Q. Did you have discussions with either John
16 Baumgart or William Andrews regarding the terms and
17 conditions of this agreement prior to you signing it?

18 A. Yes, I did.

19 Q. What terms specifically were revised from the
20 initial draft, if you know?

21 A. Well, the -- they started with the employment
22 agreement that was given to the other employees at
23 Equity Title, and then we customized it to fit the
24 situation of -- of me and Title Marketing, so there were
25 several sections that were changed from the -- from the

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1 could say that there was the opportunity to -- to do
2 what I wanted to with the agreement.

3 Q. Did you --

4 A. I did not seek an attorney's opinion.

5 Q. Okay. And did you sign this document
6 voluntarily of your own free will?

7 A. Yes.

8 Q. And you understood the terms and conditions of
9 this agreement upon signing the document, is that
10 correct?

11 A. As best I can, yes.

12 Q. Well, was there something that you looked at
13 now that you didn't understand then that you can point
14 out?

15 A. No.

16 Q. Regarding paragraph 3 of this agreement titled
17 confidential information, was that fairly standard
18 language as far as the standard employment agreement, or
19 did you revise portions of this paragraph?

20 A. It was changed at least to include the -- the
21 last sentence of that section 3. I don't recall if
22 anything else in that section was changed, but --

23 Q. Okay. The last sentence being notwithstanding
24 the above, employee may disclose confidential
25 information comprising of only software created by

[Page 50]

1 agreement that was put before the -- the other employees
2 of Equity, but as to whether they were changed in the
3 first draft or the second draft or whatever, I don't
4 recall.

5 Q. Okay. So is it safe to say that due to the
6 fact that you had your own company, TMC, that your
7 contract was different than the standard employee
8 contract for NETCO management or employees?

9 A. Yes.

10 Q. But you started out with that standard
11 contract for employees of NETCO, and you made revisions
12 to that document back and forth with the company to get
13 to this agreement, is that correct?

14 A. When Bill Andrews and I started out, we
15 started marking up that contract with changes that
16 needed to be made to make it fit my situation.

17 Q. Okay. Did you have the opportunity to review
18 the terms and conditions of this employment agreement
19 with an attorney prior to signing it?

20 A. No.

21 Q. I'm not asking you if you did.

22 A. Did I have the opportunity? There -- this --
23 the negotiation to the extent that it was a negotiation
24 or the discussion, I guess, about this agreement went on
25 for a period of at least a couple weeks, so I guess you

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1 employee to permissible companies, is that correct?

2 A. Yes.

3 Q. And does that sentence as well as a few others
4 throughout this document refer to the attachment which
5 is Exhibit 1 at the back of this document?

6 A. It refers to the attachment and to the
7 statement about permissible companies and some other
8 section.

9 MR. HABER: Paragraph 1.

10 Q. (By Mr. Shoemaker) Okay.

11 A. It refers to paragraph 1, the permissible
12 companies there as stated.

13 Q. Was paragraph 6 titled competition part of the
14 standard contract, or did you make specific revisions to
15 that paragraph?

16 MR. HABER: For clarification purposes, when
17 you refer to the standard contract, you're referring to
18 the standard employment agreement that he then worked
19 off of? Is that what you mean?

20 MR. SHOEMAKER: Yes.

21 MR. HABER: Okay. Thanks.

22 A. I don't see any obvious changes that were
23 made, but I don't recall whether there were any changes
24 made to that paragraph.

25 Q. (By Mr. Shoemaker) Okay. I'll restate my

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[Sheet 14, Page 53]

1 question. From reviewing it at this point, is there any
2 portions of paragraph 6 that you recall right now that
3 were revised at that time?

4 A. I don't recall any such -- any changes being
5 made at that time.

6 Q. Your employment with NETCO, and really Equity
7 Title, I guess, back in '93 -- Equity Title is correct
8 back in '93?

9 A. Yes.

10 Q. What was your title at that point upon being
11 hired in '93?

12 A. The only title that I ever held at Equity
13 Title and then NETCO was executive vice-president of
14 information systems. I don't remember if that title
15 began on my first day of employment in '93 or if it was
16 something that was added later, but that's the only
17 title I ever had there.

18 Q. Okay. And when -- you already stated some of
19 what you did at Equity. Once the company split -- what
20 year did you state you thought that was?

21 A. Either the beginning of '94 or the beginning
22 of '95.

23 Q. Okay. Once that split happened, did you
24 continue to work for NETCO at that time?

25 A. I worked for both parts after the split.

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1 A. He was all within Florida but in several
2 cities within Florida.

3 Q. So neither of them were in Ohio at that time?

4 A. Correct.

5 Q. Okay. How much were you working for Equity
6 Title prior to the split? When I say how much, I mean
7 from a time standpoint on a weekly basis.

8 A. 30 hours plus a week, roughly.

9 Q. And after the split did you work equally for
10 the two companies, or did you work for one of them more
11 than the other?

12 A. I don't know at the exact time of the split,
13 but within the -- the year to two after the split I came
14 to work more for the company that would become NETCO
15 than for Transcontinental. I put in more time for them.

16 Q. So would that roughly be around the 1997
17 range?

18 A. By then it had reached that, yes.

19 Q. So in 1997 how much did you work for NETCO on
20 a weekly basis, approximately?

21 A. I worked a lot of hours. I divided it up by
22 days of the month, and I -- I worked for NETCO between
23 two and three weeks a month, so I don't know. Maybe if
24 you wanted to divide it up during the week, it would be
25 30 hours a week, maybe.

[Page 54]

1 Q. Okay.

2 A. It still wasn't called NETCO at that time.

3 Q. What was it called at that time?

4 A. I think it became Equity Title Company of
5 Illinois, and the -- and Bill Baumgart's part became
6 Southeast Equity Title.

7 Q. When the company split, John Baumgart ran
8 Equity Title Company of Illinois or whatever that was
9 titled, and Bill Baumgart ran Transcontinental Title
10 which at that point may have been Southeast Equity
11 Title, correct?

12 A. Correct.

13 Q. You're not aware of any other owners of either
14 of those companies?

15 A. I'm not.

16 Q. What areas did the company that was run by
17 John Baumgart cover at that point in, say, '95?

18 A. Geographical areas?

19 Q. -- Yes.

20 A. The Chicago area, St. Louis, Milwaukee, I
21 believe Kansas City was open at that point. That's all
22 that I know for sure.

23 Q. Okay. How about the company that Bill ran,
24 Southeast Equity Title that later became TTC? What
25 areas geographically did Bill run at that time?

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1 Q. Okay. And at that same time frame around
2 1997, how much were you working for TTC?

3 A. About a quarter of my -- I guess 10 or 12
4 hours a week.

5 Q. And were you actually employed by TTC at that
6 time as well?

7 A. Tell me at what time again.

8 Q. 1997.

9 A. I believe in 1997 I was not an employee of --
10 of TTC or -- or that company.

11 Q. Okay.

12 A. I was contracted through Title Marketing.

13 Q. When, to your knowledge, did you actually
14 become an employee of TTC?

15 A. There were a couple of times during the period
16 '94 or '95, whenever the split was, through '99 that I
17 was -- that I became an actual employee of TTC. I
18 believe that at the -- at the time of the split I became
19 an employee of both, but at some time after that we
20 dropped the employment relationship with TTC and then it
21 was added back in in '99.

22 Q. Okay. We'll go through some employment
23 agreements on that so we can clarify that.

24 So regarding NETCO, let's talk about the time
25 frame, say, from '96 to '99. Did NETCO expand into

Deposition of Al Beamer

[Sheet 15, Page 57]

1 other geographical areas?

2 A. Yes.

3 Q. Would you say that was an aggressive

4 transformation?

5 A. Within the title industry, yes.

6 Q. Okay. What other states did they expand into?

7 You've mentioned to me Chicago, St. Louis, Milwaukee,

8 Kansas City. What other geographic areas did NETCO

9 expand into in that time frame?

10 A. They expanded into Indiana. Some of these

11 might have been late '95. I'm not sure if it was '96 or

12 '97 or what year, but they expanded into Indiana,

13 Kentucky, Tennessee, Texas. If they weren't in Kansas

14 City before, they were in the Kansas City, Missouri area

15 at that point. I believe they opened up a Madison

16 office in Wisconsin. Those are the ones I can think of.

17 Q. You haven't mentioned Ohio. Were they in

18 Ohio?

19 A. Oh. And Ohio. I'm sorry.

20 Q. Where were the -- where was the NETCO office

21 in Ohio or offices?

22 A. Cleveland, Cincinnati, and Columbus.

23 Q. And when were those offices opened, to the

24 best of your knowledge? I'm looking really for a year

25 more than a month.

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1 title said in charge of forms.

2 Q. Okay. Regarding the expansion of NETCO, were

3 you involved in meetings regarding such expansions with

4 John Baumgart and Bill Andrews as well as others?

5 A. Yes.

6 Q. And would that be from -- did those meetings

7 discuss the operational aspects of the expansion as well

8 as the goals in these areas and so forth?

9 A. They -- they certainly involved the

10 operational aspects of getting the offices up and

11 running. I don't --

12 Q. Okay.

13 A. -- understand goals and so forth.

14 Q. That's fine. Who else was in attendance in

15 these meetings besides yourself, John Baumgart, and Bill

16 Andrews?

17 A. These meetings meaning the -- the meetings

18 about Ohio or meetings about expansion or --

19 Q. Okay. Let's specifically talk about Ohio;

20 regarding the expansion into Ohio.

21 A. The meetings about Ohio I assume would have

22 involved John Baumgart and the -- the people who were

23 going to be managing the Ohio operations.

24 Q. Do you know who those people were?

25 A. The state manager was Kevin Murphy.

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1 A. '97 or '98.

2 Q. Were all three of them opened at about the

3 same time frame?

4 A. Within the same year, anyway. Within six to

5 eight months of each other.

6 Q. Okay.

7 A. I believe Cleveland came first.

8 Q. Were you involved in the opening of these new

9 facilities in various states?

10 A. I was certainly involved on the software and

11 computer side of making sure that they had the computer

12 equipment and that their software fulfilled the

13 underwriters' requirements for producing forms and all

14 that kind of stuff, yes.

15 Q. So again, making sure in -- strike that.

16 You were involved in making sure that the

17 forms utilized by NETCO in these areas complied with the

18 underwriters' requirements?

19 A. -- Yes.

20 Q. Were you solely responsible for that function?

21 A. No.

22 Q. Who else was responsible for it?

23 A. Bill Andrews and the -- the managers of those

24 offices and the -- everyone within the company, I guess.

25 There was no one person whose business card or -- or

[Page 60]

1 Q. Is that the same Kevin Murphy you currently

2 work with at Residential?

3 A. Yes, it is.

4 Q. Okay. Anyone else?

5 A. Well, through the period -- if you're defining

6 meetings from '96 through '99 about the Ohio expansion,

7 there were certainly other people that were involved in

8 that, yes.

9 Q. Okay. Can you give me their names?

10 A. Certainly not all of them.

11 Q. Well, let me -- let me narrow that down for

12 you, Mr. Beamer. If you want to answer that question,

13 you obviously can. During that time frame when I'm

14 talking about meetings that you had with Bill Andrews

15 or -- or John Baumgart, I'm talking about -- you know,

16 I'm not putting a term on it such as corporate meetings

17 or something, but I'm talking about meetings where John

18 Baumgart was involved, more high level management-type

19 meetings. You were involved in some of those, correct?

20 A. He had meetings that were held roughly

21 quarterly --

22 Q. Okay.

23 A. -- that I attended.

24 Q. And was there a quarterly meeting for the Ohio

25 offices, a quarterly meeting for Indiana, or are you

Deposition of Al Beamer

[Sheet 16, Page 61]

1 talking about one big quarterly meeting?

2 A. One big quarterly meeting.

3 Q. Okay. In attendance at those type of meetings

4 roughly from '96 through '99, what types of positions

5 would be included in those meetings?

6 A. The state managers were at those meetings.

7 Q. Was there one manager for each state?

8 A. Typically, yes. I'm trying to remember. I

9 believe for a while there was just one manager for some

10 of the expansion states like Kentucky and Tennessee and

11 things like that. I don't know that they each had their

12 own specific manager.

13 Q. Okay. Besides the state managers, yourself,

14 Bill Andrews, and John Baumgart, who else would be in

15 attendance at those quarterly meetings?

16 A. Ed Cook. Typically the -- those quarterly

17 meetings were just the state managers. They did hold

18 some meetings that included some of the second tier

19 people from the states, the managers of the individual

20 offices within those states.

21 Q. What types of things were discussed at these

22 quarterly meetings from a topic standpoint?

23 A. A lot of times it was talking about expansion

24 and whether there were going to be good people created

25 out of one operation that could then go be an office

[Page 63]

1 A. No.

2 Q. But you did work in April of '99, right?

3 A. Yes.

4 Q. So from that time frame of '95 to '99, when we

5 talk about computer software, we discussed forms that

6 are utilized and those types of things. Is that the

7 entire computer -- let me rephrase that.

8 Were there other computer programs that were

9 available to employees of NETCO to utilize, or is this

10 software program you're describing the whole database?

11 Does that make sense?

12 A. I guess the answer is yes and yes. There were

13 other -- other programs that were used as a part of some

14 of the employees' work at NETCO, but if you're saying

15 database, the principal database was within my software.

16 Q. Okay. And what was the name of your software?

17 A. Title Works.

18 Q. Is that still the name of it today?

19 A. Yes, it is.

20 Q. I assume that today's version is a little

21 different from the version back in '95, is that correct?

22 A. I hope so, yes.

23 Q. When we talk about the forms that underwriters

24 use and so forth, is there also -- was financial

25 information kept in this software program such as

[Page 62]

1 manager in some other operation.

2 Q. Financial performance; was that discussed at

3 these meetings?

4 A. Yes.

5 Q. Means to improve operations to become

6 profitable; was that discussed?

7 A. Generally, yes.

8 Q. How about customers in general? Were -- were

9 specific customers discussed at these meetings?

10 A. Not typically, no.

11 Q. How did your duties regarding the software

12 come into play in these meetings? How did that tie in?

13 A. Well, there were discussions as to wanting to

14 keep current with the technology available in the

15 marketplace, and so there was discussion about new --

16 new things that were available to us and whether it was

17 time for us to jump into those things at that particular

18 moment or whether we should wait or spend money or not

19 spend money.

20 Q. Okay. The computer software that we're

21 talking about, specifically for NETCO in this range of,

22 say, '95 through -- your employment ended roughly in

23 early April of '99, is that correct, with NETCO?

24 A. Yes.

25 Q. Do you recall the date specifically?

[Page 64]

1 customer lists, financial performance, things like that?

2 Did it encompass all of those things?

3 A. It included a database of customers, but it

4 did not include the financial performance of the

5 company, no.

6 Q. Okay. Let's say I work there and I want to

7 pull up and do a memo that I would do on Word or

8 something in my office. Is that something I would have

9 done on your system, or would there have been another

10 vehicle for me to do that?

11 A. Typically during the time I was there, it

12 would have been based on the software that -- on my

13 system --

14 Q. Okay.

15 A. -- as to a letter to someone, yes.

16 Q. What about forecasting details regarding

17 expansions, things like that? Those are things if

18 created by an employee or a manager, that would have

19 been on that system, correct?

20 A. No.

21 Q. Okay. Why not? Explain to me the difference.

22 A. Because they were done on spreadsheets, and my

23 system was a database-based system.

24 Q. How many other -- strike that.

25 Did you have access to any computer software

Deposition of Al Beamer

[Sheet 17, Page 65]

1 or database within NETCO during the time you were over
2 all the computer operations?

3 A. Obviously, yes.

4 Q. And you had access to that at your home in
5 Chesterfield, Missouri as well as at NETCO's office, is
6 that correct?

7 A. When you say any, I'm saying -- you're saying
8 do you have access to any part of it, and I'm saying
9 yes. I'm not saying I had access to every piece of
10 software in NETCO's computers.

11 Q. Well, can you think of something you would not
12 have had access to?

13 A. Yes. Much of the spreadsheet work was -- was
14 done by John Baumgart on his personal computer, as far
15 as I understand it. It was done outside of the realm of
16 my work.

17 Q. Okay. Spreadsheets regarding what?

18 A. Financial performance of the company.

19 Q. And would those -- those are the types of
20 things that would be discussed at meetings, correct?

21 A. That -- that was -- one of the topics at
22 meetings was financial performance, yes.

23 Q. But you didn't have specific access to what
24 John Baumgart kept on the spreadsheets; is that what
25 you're telling me?

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1 business was not something that I was typically involved
2 in.

3 Q. Was payroll kept on a different database?

4 A. Yes.

5 Q. And you're telling me you didn't have access
6 to that?

7 A. No. It was -- payroll was done by an outside
8 company --

9 Q. Okay.

10 A. -- as far as I know.

11 Q. You mentioned the pricing, the order, the
12 issuing of the title insurance policy. Those were all
13 things you were involved in that -- that you're talking
14 about the front end of it, is that correct?

15 A. That's the front end. That's what my software
16 provided for them to be able to do, yes.

17 Q. Okay. Did other people enter the data on
18 these things once the software was up and running? Is
19 that how it works?

20 A. Yes.

21 Q. And then your continuing involvement is -- is
22 what, updating the systems, things like that?

23 A. Yes.

24 Q. And in addition to that at NETCO in that '95
25 to '99 time frame, you were also dealing with

[Page 66]

1 A. That's true, yes.

2 Q. Do you know what program or software he
3 utilized that you're referring to to keep these
4 spreadsheets?

5 A. My guess is that it was Lotus 1-2-3, but I'm
6 not certain.

7 Q. Anything other than that that you can think of
8 that you did not have access to within NETCO's computer
9 system?

10 A. I had -- anything other than what?

11 Q. The spreadsheets that John Baumgart utilized
12 that we just discussed.

13 A. Well, the spreadsheet programs that John
14 Baumgart used in conjunction with Ed Cook, so it was
15 also Ed Cook and possibly Bill Andrews at some point and
16 others that developed the -- the numbers. My
17 involvement was sort of on the front end, and theirs was
18 on the back end.

19 Q. When you say the front end, what do you mean
20 exactly?

21 A. Just as to the order it came in, and we
22 figured out what the pricing was and issued the title
23 commitment and issued the policy, but as to how much was
24 being paid in rent and how much was being paid to
25 employees, the payroll system and that whole end of the

[Page 68]

1 underwriters, correct?

2 A. Yes.

3 Q. You were trying to maintain or initiate
4 relationships with underwriters, correct?

5 A. That's correct, yes. Excuse me a second. I
6 forgot to turn my phone back off.

7 MR. SHOEMAKER: Do you want to take a quick
8 two- or three-minute break?

9 THE WITNESS: Yes, please.

10 (A short break was taken.)

11 Q. (By Mr. Shoemaker) All right. I want to
12 clarify something, Mr. Beamer, as far as employment at
13 NETCO, and I'll make the question a little more complex
14 by saying if it changes regarding NETCO, TTC,
15 Residential, let me know that as well. When we talk
16 about your employment, that's you personally, Al Beamer,
17 that is employed or was employed by NETCO, is that
18 correct?

19 A. That's what I'm intending, yes.

20 Q. It's not TMC?

21 A. Right. TMC doesn't get employed. It gets a
22 contract, but it doesn't become an employee of any
23 company.

24 Q. Okay. So like with Residential, they were
25 using the services of TMC up until August of 2002,

Deposition of Al Beamer

[Sheet 18, Page 69]

1 correct?

2 A. Yes.

3 Q. At that point you personally, Al Beamer,

4 became an employee of Residential, is that correct?

5 A. Yes, that's correct.

6 Q. Did they continue to use services provided by

7 TMC?

8 A. Yes.

9 Q. So you not only draw a salary from Residential

10 personally but TMC also receives sales, I assume on a

11 monthly basis, from Residential, is that correct?

12 A. They receive revenue from them, yes. They

13 receive a payment.

14 Q. Okay. And we'll get into TTC in a little more

15 detail, but while I'm on the topic so I'm clear, when

16 you were working for Transcontinental and you had your

17 commissions license or licensing agreement --

18 A. Licensing agreement.

19 Q. Licensing agreement. You drew a salary from

20 TTC as an employee, correct?

21 A. At some points during that period I did, yes.

22 Q. Okay. And your licensing agreement, then, was

23 that with you personally as well, or would that be

24 through TMC?

25 A. Through TMC.

[Page 71]

1 Q. Would you assume that he did due to his

2 position?

3 A. I don't remember whether the sales people had

4 contracts or just the state managers. I know it got at

5 least as far as state managers, but I don't know how

6 deep into -- I know that the lower tier employees, the

7 searchers and examiners did not. I know that the -- the

8 state managers did, but I don't know at what point in

9 the middle they stopped pursuing employment agreements.

10 Q. Okay. Did you ever have any conversations

11 with Mr. Craig regarding the prospect of him leaving

12 NETCO to be employed by National Real Estate?

13 A. Never.

14 Q. Do you know if Mr. Rivera ever did?

15 A. I don't know.

16 Q. Did you ever discuss the employment of Gannon

17 Craig with Mr. Rivera?

18 A. Not that I recall.

19 Q. Do you know if Mr. Craig ever worked at

20 National Real Estate?

21 A. Not as far as I know.

22 Q. Do you know who Eduardo Carillo is?

23 A. I believe so, yes.

24 Q. And did he work at NETCO during the time frame

25 you worked at NETCO?

[Page 70]

1 Q. We talked about the standard-type contract for

2 NETCO or what was previously NETCO that you stated this

3 employment agreement which is Defendant's Exhibit C kind

4 of derived from, is that accurate? There was a --

5 A. They started a round of wanting to do new

6 employment agreements with all employees, and there was

7 one standard and then there was one developed later for

8 me, yes.

9 Q. So you were aware of the standard employment

10 agreement that NETCO had with its employees?

11 A. With -- I was aware of this employment

12 agreement, yes.

13 Q. Okay. Do you know who Gannon Craig is?

14 A. I know he was a NETCO employee in Ohio. I

15 couldn't pick him out of a lineup, but I remember that

16 he was an employee in Ohio.

17 Q. Did you ever speak with him?

18 A. I'm sure I have.

19 Q. Did you know what his position was with NETCO?

20 A. I believe he was a salesperson.

21 Q. Did you ever have any conversation -- well,

22 strike that.

23 Do you know if Mr. Craig had an employment

24 agreement with NETCO?

25 A. No, I don't.

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1 A. I'm not sure when he worked at NETCO.

2 Q. What was his position with NETCO?

3 A. My guess is that he was a searcher. I -- I

4 didn't work with him certainly at NETCO.

5 Q. What do you mean by a searcher? What does

6 that position entail?

7 A. It entails either going to the courthouse or

8 going to wherever title records are available and

9 searching the -- the records to see what documents

10 affect the property that we're being asked to insure as

11 the title agent.

12 Q. Did Mr. Carillo work in the Ohio region, do

13 you know?

14 A. I believe so.

15 Q. And am I correct that you stated you do not

16 recall if Mr. Carillo worked for NETCO at the time you

17 left NETCO?

18 A. Yes. I -- I don't know when he started his

19 employment with NETCO or how long he was employed by

20 NETCO.

21 Q. Well, did you initially meet or become aware

22 of Mr. Carillo during his employment with NETCO?

23 A. No.

24 Q. When did you meet Mr. Carillo?

25 A. After he became employed with National Real

Deposition of Al Beamer

[Sheet 19, Page 73]

1 Estate.

2 Q. And did he become employed with National Real
3 Estate on approximately November 1st, 1999?

4 A. I don't remember. That's when National Real
5 Estate first, to some extent, opened their doors, but I
6 don't remember if he was there on day one or -- it was
7 within the first month or two he came to work for
8 National Real Estate.

9 Q. When did you become aware that Mr. Carillo
10 previously worked for NETCO?

11 A. At some point during the lawsuit that involved
12 NETCO and National Real Estate.

13 Q. So you're aware now that Mr. Carillo did
14 previously work for NETCO, is that correct?

15 A. I -- I did become aware of that at some point
16 during the lawsuit, yes. I don't remember exactly when.

17 Q. Did you ever speak with Mr. Rivera regarding
18 the hiring of Mr. Carillo?

19 A. Not that I recall.

20 Q. How about Jeff Wind? Do you know who he is?

21 A. Yes.

22 Q. And who is he? Let me rephrase that. Did he
23 previously work at NETCO?

24 A. Yes.

25 Q. Did he work at NETCO when you were employed at

[Page 75]

1 that time?

2 A. I certainly discussed that he had left NETCO,
3 but I was surprised that he left NETCO.

4 Q. Do you know if he was under an employment
5 agreement at NETCO?

6 A. I -- I would assume that he was in '99, but I
7 don't know -- I don't know what contract he was under
8 beyond that.

9 Q. Did you discuss that with Mr. Wind when you
10 met with him?

11 A. Probably.

12 Q. What was the purpose of your meeting with
13 Mr. Wind in the summer or fall of 2002?

14 A. We had lunch.

15 Q. Who initiated the contact?

16 A. I believe he did.

17 Q. Did he call you, write you a letter, do you
18 remember?

19 A. I believe he called me.

20 Q. Did you discuss any future employment of
21 Mr. Wind when he called you?

22 A. I think we talked just in -- in generalities
23 as to whether he was going to stay -- to try to stay in
24 the title business or whether he was going to look for
25 work elsewhere or what he was going to do.

[Page 74]

1 NETCO?

2 A. Yes.

3 Q. And what was his position at NETCO in January,
4 say, of '99?

5 A. I believe at that time he was Missouri state
6 manager.

7 Q. Okay. After you left NETCO in April of '99,
8 did you ever have any conversations with Jeff Wind,
9 period?

10 A. Yes.

11 Q. When was the first conversation you had with
12 Mr. Wind after April of '99?

13 A. I don't recall the -- the time. I would guess
14 sometime in 2002, the summer or fall of 2002.

15 Q. And where was he employed at that time?

16 A. I don't believe he was employed at that time.

17 Q. When did his employment end with NETCO?

18 A. I don't remember specifically. Prior to the
19 time that I met with him is all I remember.

20 Q. Was it less than six months to that time that
21 you met with him, do you know?

22 A. No, I don't.

23 Q. You don't know?

24 A. I don't know.

25 Q. So did you not discuss that with Mr. Wind at

[Page 76]

1 Q. Were you with Residential Title Service at the
2 time you met with Mr. Wind? Were you employed by them?

3 A. I don't believe so. It was about the time
4 when I -- if we're saying August of 2002, that was the
5 time that I became employed with them. It would have
6 been in that -- in that summer or fall area, so it's
7 possible that it was after the time that I signed the
8 agreement.

9 Q. Did you discuss his potential employment with
10 Residential Title Services when you met with him?

11 A. No.

12 Q. Not at all?

13 A. No.

14 Q. Where did you meet with Mr. Wind?

15 A. Houlihan's on Manchester Road in St. Louis.

16 Q. Did you meet with him again after that initial
17 meeting?

18 A. I don't believe I met with him, no.

19 Q. Have you had any contact with him since that
20 initial meeting?

21 A. I called him once or twice just to see how he
22 was doing.

23 Q. Did you discuss any potential employment of
24 Mr. Wind by Residential Title Services during any of
25 those phone conversations or meetings with Mr. Wind?

Deposition of Al Beamer

[Sheet 22, Page 85]

1 Q. When did her employment with NETCO end?

2 A. A couple of years before that.

3 Q. Where was Miss Brown employed at the time that

4 you had the conversation with Miss Bolch?

5 A. The title agency that's owned by Bank of

6 America. I don't know the name of it.

7 Q. So you never asked Miss Bolch if she wanted to

8 come work for Residential?

9 A. No, not -- I asked if she knew of anybody who

10 was -- who would be available to -- to work for

11 Residential, and she obviously wasn't.

12 Q. Well, did she tell you that specifically?

13 A. She said that she was still working for NETCO.

14 Q. And that's my question. After that did you

15 ever ask her whether she wanted to come work for

16 Residential or not?

17 A. I did not ask her that.

18 MR. SHOEMAKER: Do you want to take a break

19 for lunch? Off the record.

20 (A lunch break was taken.)

21 Q. (By Mr. Shoemaker) Okay. To begin with, I

22 want to clarify one thing regarding TMC. Is your

23 clients -- are your clients, I should say, all title

24 agents from TMC?

25 A. Title insurance agents or underwriters.

[Page 87]

1 Q. When they split, is that when this company

2 became Southeast Equity Title, or was that already a

3 company that was acquired by Bill? Do you understand my

4 question?

5 A. I believe so.

6 Q. All right.

7 A. The -- their -- the company that -- that split

8 became Southeast Equity Title at that point. There was

9 another company named Southeast Equity Title that was

10 acquired by Bill that was a separate company. I don't

11 know how they ended up with the same name, but they --

12 they had the same name.

13 Q. Okay. So this other company, where was --

14 where was this other company located. Southeast Equity

15 Title, the company you're talking about that was

16 acquired?

17 A. That was in -- somewhere outside of -- in

18 rural Ohio. I don't remember the name of the city.

19 Q. Do you recall --

20 A. It wasn't a major city.

21 Q. Do you recall when Bill purchased that

22 company?

23 A. No, not exactly. It was in the '90s, the

24 early '90s, I believe. The mid '90s.

25 Q. Let me show you what I will mark as

[Page 86]

1 Q. One or the other?

2 A. Yes.

3 Q. Okay. Let's talk about your employment with

4 Transcontinental Title or what I guess initially was

5 Southeast Equity Title. Is that correct or not?

6 A. Again, it grew from Equity Title, and then it

7 split.

8 Q. Okay.

9 A. And then they -- whatever they -- I believe

10 they became Southeast Equity Title either at the time of

11 the split or soon after and eventually became

12 Transcontinental.

13 Q. And I want to talk about that company as of

14 the time of the split, what became Southeast Equity

15 Title and then Transcontinental Title, okay?

16 A. I understand.

17 Q. Initially at the split did you become an

18 employee of Southeast Equity Title, or were you just

19 doing consulting work?

20 A. I was an employee.

21 Q. Okay. And what was your position there?

22 A. I believe I kept the same title with -- with

23 them that I kept with the company that became NETCO

24 which was executive vice-president -- executive

25 vice-president of information systems.

[Page 88]

1 Defendant's Exhibit D.

2 (Defendant's Exhibit D was marked for

3 identification.)

4 Q. (By Mr. Shoemaker) Do you recognize that

5 document?

6 A. Yes.

7 Q. And what is it?

8 A. It's a contract extension and amendment

9 between me and Equity Title Southeast, Inc. dated July

10 12th, 1996.

11 Q. So that wasn't your first contract with Equity

12 Title/Southeast, is that correct?

13 A. I -- I don't -- the names changed, and they --

14 we didn't do a contract extension or a contract

15 amendment each time the company's name changed.

16 Q. You did not do one each time the name changed?

17 A. No.

18 Q. So paragraph 1 of this, though, in Exhibit D,

19 the relationship, it states the employer/employee

20 relationship is hereby replaced by an independent

21 contractor relationship, is that correct?

22 A. Yes, it does.

23 Q. So this contract basically terminated your

24 employee relationship with TTC at that time, is that

25 correct?

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[Sheet 23, Page 89]

1 A. With -- with Equity Southeast.
 2 Q. I apologize.
 3 A. With -- with that branch, with that company,
 4 yes.
 5 Q. So your personal involvement, Al Beamer,
 6 ceased as an employee of them at that time. However,
 7 Title Marketing Company continued their relationship, is
 8 that accurate?
 9 A. Yes.
 10 (Defendant's Exhibit E was marked for
 11 identification.)
 12 Q. (By Mr. Shoemaker) Do you recognize
 13 Defendant's Exhibit E, Mr. Beamer?
 14 A. Yes.
 15 Q. Can you tell me what this document represents?
 16 A. It's a contract extension and amendment
 17 between Title Marketing Company and Transcontinental
 18 Title dated August 1st, 1998.
 19 Q. And that's signed by yourself and
 20 Mr. Baumgart, is that correct?
 21 A. Mr. Bill Baumgart, yes.
 22 Q. So explain to me the -- what the payments are
 23 based on in paragraph 2, current payments of 45,000 per
 24 year paid semi-monthly and a bonus. What is the 45,000
 25 per year for?

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1 and that I would get my car allowance and some other
 2 things through the company that became Transcontinental,
 3 and I didn't need to be an employee of Transcontinental
 4 in order to have that happen.
 5 Q. Okay. Let me mark this as F.
 6 (Defendant's Exhibit F was marked for
 7 identification.)
 8 Q. (By Mr. Shoemaker) Do you recognize this
 9 document marked as Defendant's Exhibit F, Mr. Beamer?
 10 A. Yes.
 11 Q. And what is this document?
 12 A. It's an amendment to the previous contracts
 13 between Title Marketing, Transcontinental, and myself or
 14 just Title Marketing and Transcontinental, I guess.
 15 Q. And is this the contract amendment that would
 16 have been the next contract subsequent to Defendant's
 17 Exhibit E signed in August of '98?
 18 A. I believe so, yes.
 19 Q. Okay. Does this amendment change the
 20 relationship between yourself, TMC, and Transcontinental
 21 Title?
 22 A. Yes.
 23 Q. And how did it change it?
 24 A. It changes it back to an employee/employer
 25 relationship as -- as well as the independent contractor

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1 A. All of it is for all of the work that I did
 2 for Transcontinental and the -- the rights to the
 3 software and the whole thing. It wasn't broken down as
 4 to 45,000 was for something and the bonus was for
 5 something else.
 6 Q. At some point later that 45,000 or that range
 7 becomes your salary, is that correct?
 8 A. In the later contract, yes.
 9 Q. And then the bonus structure is -- is set up
 10 similar to how this is set up for TMC, correct?
 11 A. Yes.
 12 Q. Why does the relationship change?
 13 A. The -- well, the relationship didn't change at
 14 the time of this contract. This merely extended it.
 15 Q. Okay. Once it does change, and I'm not trying
 16 to trick you into anything, but what transpires for
 17 either yourself or TTC to want you to become an employee
 18 versus this relationship?
 19 A. The -- the reason for the change in July of
 20 '96 was that although I was an employee, I was only --
 21 there was no point of me being an employee of both
 22 companies for the purpose of having health insurance and
 23 things like that because at the time that the companies
 24 divided, it was determined that I would get my health
 25 insurance through the -- the company that became NETCO

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1 relationship between TMC and Transcontinental.
 2 Q. And was there a reason for that change?
 3 A. Yes.
 4 Q. What was the reason?
 5 A. So that I could get medical and dental
 6 insurance through Transcontinental.
 7 Q. On 3/30 of '99 you were still employed with
 8 NETCO, weren't you?
 9 A. I was in the -- the last days of that.
 10 Q. Well, did your employment end there suddenly,
 11 or was -- when you say the last days, was there a date
 12 set that it ended or not? I'm talking about at NETCO.
 13 A. Did it end suddenly? Yes. It ended suddenly.
 14 Q. Are you telling me you knew on March 30th of
 15 1999 that your employment at NETCO was going to end?
 16 A. I had reason to expect that it would, yes. I
 17 was negotiating a -- or trying to negotiate a new
 18 contract with NETCO, and it wasn't going well.
 19 Q. What do you mean by it wasn't going well?
 20 A. I had asked for a written compensation
 21 contract. I had asked for a raise in -- in salary, and
 22 the initial responses that I had received from NETCO
 23 were negative.
 24 Q. That reminds me of something I did want to ask
 25 you. Can you look at Exhibit C? Do you still have that

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[Sheet 24, Page 93]

1 in front of you, your employment agreement --

2 A. Yes.

3 Q. -- with NETCO? And I believe you told me that
4 was signed in January of '99, is that correct?

5 A. Yes.

6 Q. And now we're talking about the March of '99
7 time frame regarding when you were negotiating a
8 contract, is that accurate?

9 A. Yes.

10 Q. What transpired in those two months?

11 A. I had asked at the time, several instances
12 over the preceding year or two before I finally left
13 NETCO for a compensation written contract like I had --
14 like I had started with at NETCO and I still had at
15 Transcontinental, and I typically had done business with
16 Trans -- with Title Marketing Company with other
17 companies. I wanted a written contract. I had been
18 turned down. I continued to -- to seek that with --
19 with NETCO, and that was one of the sticking points as
20 to why I left, that they would not agree to give me such
21 a contract.

22 Q. So did you resign from your employment at
23 NETCO? Did you quit? Were you fired? How would you
24 classify that?

25 A. I resigned.

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1 it was that -- that he would not -- he would not change
2 his position, that there was not going to be a written
3 contract and that he would not increase my compensation
4 and that I was welcome to stay under his terms of no
5 written contract and no increase in compensation but
6 that he wasn't willing to make or improve the offer.

7 Q. Okay. So as of March 30 of '99, you -- you
8 obviously felt that your employment at NETCO was going
9 to end although it didn't end until April, is that
10 accurate?

11 A. Yes.

12 Q. So Defendant's Exhibit F, your contract
13 amendment with TTC, that increased the amount of time
14 that you were going to be working with TTC, is that
15 correct?

16 A. Yes.

17 Q. And it states in paragraph 3 that you were
18 going to receive a salary of 45,000 per year, is that
19 correct?

20 A. Yes.

21 Q. Is that in addition to the 45,000 that was
22 being paid to TMC under Defendant's Exhibit G?

23 A. No.

24 Q. So that's the same \$45,000 that's referred
25 to -- strike that. That's a poor question.

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1 Q. Did you inform John Baumgart that you were
2 going to resign?

3 A. Yes.

4 Q. What was his response to that?

5 A. We had several meetings over the course of a
6 few days and phone conversations. I was still working
7 for his company and was still in their offices doing
8 work, hoping that -- that things would change and that
9 he would ultimately agree to something that -- that I
10 could agree to as to a contract that would keep me
11 working for NETCO, but at a final meeting in early April
12 I was told that -- that they were not going to move off
13 their positions.

14 Q. So did you speak with John Baumgart? Is he
15 the person you spoke with when you told NETCO you were
16 resigning?

17 A. It was John Baumgart and Ed Cook.

18 Q. And was this a face-to-face meeting?

19 A. There were at least two face-to-face meetings
20 during that period, yes.

21 Q. The one where you formally told them you were
22 resigning --

23 A. It was a face-to-face meeting, yes.

24 Q. What was John's response?

25 A. At -- at all of those -- those conversations

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1 That's the same format of payments that TMC
2 was previously receiving, correct, as far as a set
3 amount, a lump sum amount?

4 A. I guess it would be. It's 45,000. Before it
5 was 45,000.

6 Q. That was the only lump sum payment that was
7 going to either yourself or TMC as of 3/30 of '99,
8 correct?

9 MR. HABER: That wasn't a lump sum.

10 A. That wasn't a lump sum.

11 Q. (By Mr. Shoemaker) Okay. Let me -- let me
12 rephrase that. That was the only annual payment or
13 salary based upon a per year that was being paid either
14 to yourself or TMC at the time, correct?

15 A. I believe it was bi-weekly, but it was the
16 only regular payment like that, yes.

17 Q. Based upon a year?

18 A. Yes.

19 Q. Okay. And did the percentage of gross
20 receipts in excess of one million per quarter change on
21 3/30 of '99?

22 A. Yes.

23 Q. And how did they change?

24 A. It went from three-quarters of a point to one
25 point.

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[Sheet 25, Page 97]

1 Q. And the amount of time in paragraph 1 also
 2 changed in that you'd be working the first and third
 3 calendar weeks of each month at TTC, correct?
 4 A. Yes.
 5 Q. Up until that time you were working roughly
 6 how much there, about a week? Is that what you told me?
 7 A. Yeah.
 8 Q. A week a month?
 9 A. Roughly. Roughly a week.
 10 Q. Okay.
 11 (Defendant's Exhibit G was marked for
 12 identification.)
 13 Q. (By Mr. Shoemaker) I'll show you what's been
 14 marked as Defendant's G. Do you recognize this
 15 document?
 16 A. Yes.
 17 Q. What is it?
 18 A. It's a contract amendment between myself, TMC,
 19 and TTC.
 20 Q. And what did this amendment change?
 21 A. It changed the payments per month for three
 22 months in 1999.
 23 Q. Why?
 24 A. The title insurance business for TTC was down
 25 at that point, and Bill Baumgart asked me to help them

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1 out by taking a reduction for those three months.
 2 Q. And did you agree to do that?
 3 A. I did.
 4 Q. And that's your signature at the bottom there?
 5 A. Yes.
 6 Q. So this wasn't deferred in any way. It was
 7 just flat out reduced for that -- for those three
 8 months, correct?
 9 A. Yes.
 10 Q. And that was through the month of August of
 11 1999, correct?
 12 A. Yes.
 13 Q. All right. While you were at TTC, and let's
 14 just say in March of '99 when you started working there
 15 more, what states were TTC -- was TTC located in?
 16 A. Florida, Georgia, Maryland, Virginia,
 17 Tennessee, Arkansas, Alabama, Mississippi. Did I say
 18 Tennessee?
 19 Q. Yes, you did.
 20 A. I believe those were the states.
 21 Q. What about Ohio?
 22 A. TTC was never in Ohio.
 23 Q. Was Bill Baumgart ever an owner of a title
 24 agency or entity dealing with title insurance in the
 25 state of Ohio?

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1 A. Yes.
 2 Q. And who was that?
 3 A. He bought a company named Equity -- Equity
 4 Southeast or Equity Title Southeast or something like
 5 that.
 6 Q. When did he buy that?
 7 A. '95, '96, somewhere around there.
 8 Q. But it was separate from TTC?
 9 A. Absolutely.
 10 Q. Okay. What was his interest in -- in that
 11 entity, do you know? Did he own it, did he run it, to
 12 your knowledge?
 13 A. He was owner and he -- I don't know. He was
 14 owner, but I -- I don't know much about it because I was
 15 never involved in that company.
 16 Q. And Bill Baumgart and TTC expanded to all of
 17 these states that you just referenced from just being in
 18 Florida when the split occurred, correct?
 19 A. Yes.
 20 Q. Were you involved in the expansion of TTC or
 21 its former name during that time frame regarding your
 22 computer software, etc.?
 23 A. Yes.
 24 Q. Was your computer software used in all of
 25 those states in which TTT -- excuse me -- TTC expanded?

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1 A. Yes.
 2 Q. Was your computer software used in the entity
 3 we're discussing, Southeast Equity Title, that was in
 4 Ohio?
 5 A. No.
 6 Q. Why not?
 7 A. That was -- that company was never brought
 8 into TTC. It was a separate investment that Bill
 9 Baumgart made, and I never went to that company. I was
 10 never a part of it. It was never a part of what I was
 11 paid for. It was never a part of Transcontinental Title
 12 in any way.
 13 Q. Okay. Do you know what this entity we're
 14 talking about, Southeast Equity Title, the entity that
 15 Bill Baumgart owned, do you know what services they
 16 performed generally?
 17 A. They were a title insurance agency.
 18 Q. Like TTC and NETCO?
 19 A. Like every title insurance agency.
 20 Q. Okay.
 21 A. I believe that they were particularly involved
 22 in the -- the realtor purchase market part of the title
 23 insurance and not just the -- the lender part of the
 24 title insurance business that TTC and NETCO were
 25 pursuing.

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[Sheet 26, Page 101]

1 Q. So their interests would have overlapped to a
2 certain extent, but they didn't do the exact same thing,
3 is that correct?

4 A. They didn't do the exact -- they were more of
5 a traditional title insurance agency that sought
6 business from realtors.

7 Q. Okay. But certainly they would have competed
8 for some clients the same as between NETCO, is that
9 correct?

10 A. I don't believe they competed with NETCO
11 because I -- I think they were in a suburban county.
12 They weren't in a main city.

13 Q. What suburban county?

14 A. I don't remember the -- the suburban counties.
15 I recall it was some little city. They were not in
16 Cincinnati, Columbus, or Cleveland, as far as I know.
17 They were -- they were in a small county that was
18 somewhere else in Ohio.

19 Q. Do you recall which of those cities you just
20 referenced, Columbus, Cincinnati, or Cleveland that
21 Southeast Equity Title was closest to?

22 A. No. I never went there.

23 Q. So you don't know the answer to that, is that
24 correct?

25 A. That's correct.

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1 Q. Okay. And what I asked you is if that's what
2 he told you, or is that just your general understanding?

3 A. That has to be what he told me because that's
4 the only way I would have had any understanding. I
5 wasn't privy to any contracts or anything when he bought
6 that company.

7 Q. Did you ever talk to anyone else associated
8 with Transcontinental Title regarding Southeast Equity
9 Title other than Bill Baumgart?

10 A. Yes.

11 Q. Who?

12 A. Frank Skryd.

13 Q. And when did you speak with him about it?

14 A. I don't recall specific dates. I just
15 remember him saying he had to go up to that -- that
16 office because they did -- they performed an audit
17 function of the escrow accounts of that office.

18 Q. Does Bill Baumgart still own that company, do
19 you know?

20 A. I believe he does not.

21 Q. Do you know when his ownership interest ceased
22 in that company?

23 A. I believe it ceased several years ago.

24 Q. Do you have a better guess than that?

25 A. I believe it ceased in '97 or '98.

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1 Q. To this date you still don't know?

2 A. I don't know.

3 Q. So is it fair to say that --

4 MR. HABER: Can you hold on one second?

5 MR. SHOEMAKER: Yes. We can go off the
6 record.

7 (There was a discussion off the record.)

8 Q. (By Mr. Shoemaker) Okay. We were talking
9 about Southeast Equity Title, a company owned by Bill
10 Baumgart, and you were stating you weren't -- you didn't
11 know exactly where they were located. My question is,
12 then, is it fair to say that you're not actually sure
13 what market they competed in?

14 A. I was told that they competed in their little
15 county.

16 Q. You were told that by who?

17 A. By Bill Baumgart.

18 Q. That they only competed in their own county?

19 A. As far as I knew, yes.

20 Q. Well, that's what I'm trying to make sure of,
21 Mr. Beamer, what you knew. That's my question. Is that
22 what he told you specifically, that they only competed
23 within their own county?

24 A. That's my knowledge of -- of what that company
25 did as -- as I understood it from Bill Baumgart.

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1 Q. And what do you base that belief on?

2 A. Conversations with Bill Baumgart.

3 Q. Specifically what do you recall he told you
4 regarding his ownership in the '97, '98 time frame?

5 A. That he -- he bought it purely as an
6 investment because the previous owner was caught
7 stealing money from his escrow account and they wanted
8 to preserve the company because the underwriter thought
9 that it was a company worth preserving, that the plan
10 all along was for Bill Baumgart to only own it for a
11 very short period and then to sell it back to the
12 managers of that agency and that he -- after a short
13 period he did, in fact, sell it back to the managers of
14 that agency.

15 Q. Okay. So are you telling me that Bill
16 Baumgart told you he sold it in '97 or '98, or that was
17 just your general belief?

18 A. Bill Baumgart told me he sold it.

19 Q. Do you know who he sold it to?

20 A. He sold it to the managers of the -- of the
21 agency. I don't know any names.

22 Q. Okay. How long did your contract with TTC --
23 let me rephrase that.

24 When was your employment contract with TTC to
25 end or expire?